National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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Press Release (R-2630): NLRB General Counsel Seeks Court Review of Combined Unit of Board-side and General Counsel-side Employees

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Dean Transportation, Inc. and Dean Transportation Employees Union (7-CA-49003, 7-CB-15014; 350 NLRB No. 4) Grand Rapids, MI June 22, 2007. The Board agreed with the administrative law judge that Dean Transportation violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with Grand Rapids Educational Support Personnel Association (GRESPA) as the representative of a unit of its employees, and violated Section 8(a)(1), (2), and (3) by recognizing Dean Transportation Employees Union (DTEU) as the representative of the bus drivers in the unit and imposing the terms of its collective-bargaining agreement with DTEU, including the union-security clause. [HTML] [PDF]

The Board also agreed with the judge's underlying findings that (1) Dean Transportation is the successor to Grand Rapids Public Schools as the employer of bus drivers, mechanics, and route planners at its 900 Union Street facility (the unit); (2) GRESPA is a labor organization within the meaning of Section 2(5); (3) the unit is an appropriate bargaining unit; (4) the bus drivers in the unit were not accreted to the DTEU bargaining unit; and (5) GRESPA made an appropriate demand for recognition and bargaining.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Grand Rapids Educational Support Personnel Association; complaint alleged violation of Section 8(a)(1), (2), (3), and (5). Hearing at Grand Rapids, May 9-16, 2006. Adm. Law Judge Michael A. Marcionese issued his decision Sept. 27, 2006.

Foothill Sierra Pest Control, Inc. (32-CA-22419; 350 NLRB No. 3) Sonora, CA June 18, 2007. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Kirtlye Wheeler because she engaged in union or other protected concerted activities. [HTML] [PDF]

(Members Liebman, Schaumber, and Kirsanow participated.)

Charge filed by Teamsters Local 439; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Sonora, Sept. 20-21, 2006. Adm. Law Judge Lana H. Parke issued her decision Nov. 22, 2006.

Goodwill Industries of North Georgia, Inc. (10-RC-15312; 350 NLRB No. 5) Chamblee, GA June 21, 2007. The Board held, in agreement with the Acting Regional Director, that the disabled individuals performing janitorial services for Goodwill Industries of North Georgia, Inc. at the Chamblee, GA campus of the Centers for Disease Control (CDC Chamblee) are employees within the meaning of Section 2(3) of the Act. The proceeding was remanded to the Regional Director for further appropriate action. [HTML] [PDF]

The Acting Regional Director found that the Employer had failed to show that its relationship with the disabled workers is primarily rehabilitative and included them in the unit of all janitorial workers employed by the Employer at CDC Chamblee petitioned for by Operating Engineers Local 926. The Employer filed a request for review of the Acting Regional Director's decision and the Board granted the request for review.

In its decision on review, the Board explained that after the Acting Regional Director issued his decision, it reexamined and reaffirmed the "typically industrial/primarily rehabilitative" standard in *Brevard Achievement Center*, 342 NLRB 982 (2004), applied by the Acting Regional Director here, in assessing the statutory employee status of disabled individuals working in rehabilitative vocational settings. Applying that standard to this case, the Board concluded that the Employer has not met its burden of showing that its relationship with its disabled workers is primarily rehabilitative. Although the Board decided that the Acting Regional Director properly directed an election in a unit consisting of the employer's disabled and nondisabled janitorial workers at CDC Chamblee, it disagreed with certain aspects of his application of the "typically industrial/primarily rehabilitative" standard.

Member Liebman noted her dissent in *Brevard* both from the Board's reaffirmation of the "typically industrial/primarily rehabilitative" standard and from the result reached applying that standard to the facts of the case. 342 NLRB at 989 (dissent of Member Liebman and Member Walsh). She recognized *Brevard* as controlling precedent and joined in this opinion. In addition, she would find the disabled workers involved here to be statutory employees applying the plain-language test endorsed by the *Brevard* dissent.

(Members Liebman, Schaumber, and Kirsanow participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Galicks, Inc. (Sheet Metal Workers Local 33 of Northern Ohio) New Philadelphia, OH June 20, 2007. 8-CA-36079, 36766; JD-41-07, Judge Ira Sandron.

DHL Express, Inc. (Postal Workers) Wilmington, OH June 21, 2007. 9-CA-43277; JD-42-07, Judge Arthur J. Amchan.

NO ANSWER TO CONSOLIDATED COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the consolidated complaint.)

Apex Electric Services, Inc., and Apex Industrial Services, Inc. (Electrical Workers [IBEW] Local 177) (12-CA-24200, 24237, 350 NLRB No. 7) Jacksonville, FL June 21, 2007. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATIONS OF REPRESENTATIVE

FedEx Home Delivery, a separate operating division of FedEx Ground Package System, Inc., Wilmington, MA, 1-RC-22034, 22035, June 18, 2007 (Chairman Battista and Members Liebman and Kirsanow)

Superior Fuels, Crown Point, IN, 13-RC-21530, June 20, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION AND DIRECTION [that Regional Director open and count ballots]

Clinical Directors Network, New York, NY, 2-RC-23037, June 20, 2007 Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Waste Management of Maryland, Temple Hills, MD, 5-RD-1401, June 19, 2007 (Members Liebman, Schaumber, and Kirsanow)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Nevada Ready Mix, Henderson, NV, 28-UC-239, June 20, 2007 (Members Liebman, Schaumber, and Kirsanow)

Townsend, Inc., Pittsboro and Siler City, NC, 11-RC-6664, June 20, 2007 (Members Liebman, Schaumber, and Kirsanow)
